

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25

CAPITOL STREET SURGERY CENTER, LLC	)	
	)	
and	)	Case: 25-CA-271204
	)	
MARTIN LAUSTER, an Individual	)	

**RESPONDENT CAPITOL STREET SURGERY CENTER, LLC’S  
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE DECISION**

Respondent, Capitol Street Surgery Center, LLC (“CSSC”), by counsel, pursuant to Section 102.46 of the Rules and Regulations of the Board, respectfully files its exceptions to the Decision of the Administrative Law Judge (the “Decision”) in the above-captioned case. The bases for these exceptions are more fully set forth in CSSC’s Brief in Support filed herewith.<sup>1</sup> CSSC respectfully excepts the following findings and conclusions:

1. *First*, the ALJ’s numerous credibility determinations should not be given deference by the Board. The ALJ did not oversee the trial of this matter; he was not assigned to this case until the following year when the prior ALJ left the Division of Judges. As such, the ALJ did not have the opportunity to view the trial, see or hear witnesses testify, or assess witness demeanor. His credibility determinations carry no weight where he made his Decision entirely upon the written transcript – just as the Board has the ability to do. This Board should apply a *de novo* standard of review, making its own credibility determinations based on the entire record of evidence.

2. *Second*, the ALJ erred by concluding that the General Counsel satisfied her *prima facie* case for a of Section 8(a)(1) violation where there was no evidence to establish *animus* or a

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<sup>1</sup> See *Special Touch Home Care Servs.*, 349 NLRB 759, 760 (2007) (noting that Rule 102.46(a)(1) requires a party to state the grounds for an exception but make the argument, including citation to the facts, in the supporting brief).

*nexus* between Charging Party, Martin Lauster’s (“Lauster”), protected activity and his discharge. The CSSC’s Administrator, Brandon Ehret (“Ehret”), had no knowledge of Lauster’s protected activity when he discharged Lauster, and Lead Interventional Radiology Techs, Jenny Lozano and Danielle Mohindra, expressly testified that their decision to report Lauster’s improper conduct on November 18, 2020 had nothing to do with his comments in the inventory meeting two weeks earlier. Despite this lack of evidence, the ALJ surmised Lauster’s November 5 comments regarding the C-Arm were the cause of his November 18 termination. The ALJ’s conclusion is unsupported by the record, and instead, is supported only by his speculation.

3. *Third*, the ALJ erred by concluding that Ehret’s reasons for terminating Lauster due to performance issues and unprofessional behavior were pretextual where the ALJ ignored five of CSSC’s witnesses’ testimony on this point (***two witnesses went completely unmentioned in the Decision***) and ignored two of Lauster’s own witnesses confirming his poor performance and behavior. All of this testimony corroborated CSSC’s legitimate, nondiscriminatory reason for termination, yet the ALJ disregarded or ignored it.

4. *Fourth and finally*, the ALJ erred by finding inconsistencies in CSSC’s witnesses’ testimony that were not true inconsistencies, where the differences are readily explained based upon the varying vantage points of each witness with respect to the flashlight incident that was “the straw that broke the camel’s back” for Lauster’s employment. The ALJ further erred by completely ignoring evidence detrimental to the General Counsel’s case, such as material inconsistencies in her witnesses’ testimony and changing testimony regarding the flashlight incident that seriously undermine Lauster’s explanation of what happened during that procedure

5. With respect to each of the foregoing exceptions, CSSC will cite specific references to the record in the accompanying Brief.

WHEREFORE, Respondent, Capitol Street Surgery Center, LLC, submits that the ALJ's factual findings, credibility determinations, and conclusions that CSSC violated the Act as set forth in his Decision are contrary to the evidence, applicable law, and precedent under the National Labor Relations Act. As a result, CSSC respectfully requests that the Board not adopt those particular findings and conclusions in the ALJ's Decision, and instead, enter an order finding that CSSC did not violate Section 8(a)(1) of the Act in terminating Lauster's employment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Office of the Executive Secretary of the National Labor Relations Board and has been served upon the following, by first-class, United States mail, postage prepaid, this 9th day of June, 2022:

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